TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 214

JUAN BENGZON, PETITIONER,

vs.

THE SECRETARY OF JUSTICE AND INSULAR AUDITOR OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES

PETITION FOR CERTIORARI FILED JULY 20, 1936.

CERTIORARI GRANTED OCTOBER 12, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 214

JUAN BENGZON, PETITIONER,

vs.

THE SECRETARY OF JUSTICE AND INSULAR AUDITOR OF THE PHILIPPINE ISLANDS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES

INDEX.

	Page
Proceedings in Supreme Court of Philippine Islands	1
Caption	1
Record from Court of First Instance of Manila	1
Complaint	1
Exhibit "A"—Gratuity Law	4
Demurrer	9
Answer	18
Stipulation of facts	18
Exhibits "A" to "I", inc.—Correspondence	20
Decision, Sison, J.	29
Assignments of error	35
Decision, Malcolm, J.	36
Dissenting opinion, Villa-Real, J.	43
Motion for reconsideration	50
Resolution denying motion for reconsideration	57
Exception and notice of appeal	58
Resolution on notice of appeal	59
Final judgment	59
Clerk's certificate	60
Order allowing certiorari	61

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., Nov. 22, 1936.

—8423-C

Record on Appeal to the Supreme Court of the United States

United States of America
Commonwealth of the Philippines

In the Supreme Court of the Philippine Islands

Court of First Instance of Manila, Case No. 46037
Concerning payment of gratuity to Justices of the Peace.

JUAN BENGZON,
Petitioner-Appellant,
– versus –
THE SECRETARY OF JUSTICE AND INSULAR AUDITOR,
Respondents-Appellees.

R. G. No. 42821

APPELLATE JURISDICTION

Be it remembered that, on the dates respectively mentioned, the following proceedings were had in the above-entitled case:

On March 7, 1934, the following complaint was filed with the Court of First Instance of Manila:

(CAPTION AND TITLE OMITTED)

COMPLAINT

Comes now plaintiff-petitioner, by his undersigned attorney, and to this Honorable Court, respectfully states:

I

That plaintiff-petitioner is of legal age, a resident of the municipality of Lingayen, Pangasinan, and an ex-justice of the peace for the municipality of Lingayen, Pangasinan, P. I.

II

That defendants are also of legal age, residents of the city of Manila, duly appointed, qualified and are at present holding the offices of Secretary of Justice and Insular Auditor respectively of the Philippine Islands.

III

That plaintiff was, until about January 15, 1933, the justice of the peace for the municipality of Lingayen, province of Pangasinan, and that by reason of Act 3899, passed by the Philippine Legislature and approved by the Governor-General, the plaintiff-petitioner was forcibly separated from the service as justice of the peace for the said municipality of Lingayen, Pangasinan, P. I.

IV

That on or about February 21, 1933, Act 4051, commonly known as the Gratuity Law, was passed by the Philippine Legislature and approved by the Governor General, a copy of said law being herewith attached, marked exhibit "A" and made a part of this complaint;

V

That the said Act 4051, among other things, expressly provides, under Sec. 7 thereof, the following: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-Eight hundred and Ninety-Nine, shall also be entitled to the gratuities provided for in this Act."

VI

That under section 1 of the said Act 4051, officers and employees of the Insular Government who would be separated or retired from the service are entitled to a gratuity as follows:

"Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-

four months in the case of those whose compensation exceeds twelve hundred pesos a year; Provided, that in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty four hundred pesos".

VII

That the plaintiff and petitioner herein, by virtue of the provision of said Act 4051, duly filed his application for gratuity under the said Act with the respondents Secretary of Justice and Insular Auditor, but the respondents herein refused, denied and still refuse and deny to approve and authorize the payment to the plaintiff herein of his gratuity as in said Act 4051 is provided;

VIII

That your petitioner herein has no plain, speedy or adequate remedy to enforce his right under the provisions of said Act 4051 other than this action;

WHEREFORE, plaintiff-petitioner respectfully prays this Honorable Court:

(a) To issue a writ of mandamus directed to the respondents, commanding them forthwith to state their reasons for refusing to approve and authorize the payment of his gratuity as in said Act 4051 is provided;

(b) That in view of said return, and after hearing the respective parties, a judgment be rendered directing the issuance of a mandamus absolute, commanding the said respondents to authorize, approve and otherwise order the payment to the plaintiff-petitioner of his gratuity as in said Act 4051 is provided;

(c) That plaintiff-petitioner be awarded any other relief to which he may lawfully be entitled, with the costs of this action against the respondents.

Manila, March, 3, 1934.

MARIO BENGZON
Attorney for the Plaintiff
430 Rizal Avenue, P.O. Box 449
Manila.

PHILIPPINE ISLANDS }
CITY OF MANILA } SS.

JUAN BENGZON, having been duly sworn, deposes and says: I am plaintiff in the above entitled action; I have read the foregoing complaint and know the contents thereof; and that all the allegations contained therein are true of my own knowledge.

JUAN BENGZON

Subscribed and sworn to before me in the City of Manila this 3rd day of March 1934. Affiant did not exhibit any cedula certificate being exempt by reason of over age.

MARIO BENGZON
Notary Public
My commission expires on
December 31, 1934.

Doc. No. 359
Page 73
Book III
Series of 1934.

EXHIBIT "A"

(See par. IV of the complaint)

NINTH PHILIPPINE LEGISLATURE
Second Special Session } H. No. 2523

No. 4051

AN ACT TO PROVIDE FOR THE PAYMENT OF RETIREMENT GRATUITIES TO OFFICERS AND EMPLOYEES OF THE INSULAR GOVERNMENT RETIRED FROM THE SERVICE AS A RESULT OF THE REORGANIZATION OR REDUCTION OF PERSONNEL THEREOF, INCLUDING THE JUSTICES OF THE PEACE WHO MUST RELINQUISH OFFICE IN ACCORDANCE WITH THE PROVISIONS OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND NINETY-NINE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and

by the authority of the same:

SECTION 1. Whenever it is necessary, in carrying out the provisions of Act Numbered Four thousand and seven or any other provisions of law, department order, or regulation adopted for the purpose of consolidating activities or reducing the personnel and expenses of the Government, to abolish a position or retire an officer or employee in any bureau or office of the Insular Government on or before December thirty-first, nineteen hundred and thirty-three, the officer or employee to be separated or retired from the service shall be entitled to a gratuity as follows:

(a) Regularly appointed officers and employees shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year: PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(b) Temporary officers and employees who have served the Government for at least five years before the approval of this Act, shall be entitled to gratuity at the rate of one month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof, but not to exceed twenty-four months in the case of those whose compensation exceeds twelve hundred pesos a year, PROVIDED, That in the case of those who receive twelve hundred pesos a year or less the total retirement gratuity to which they may be entitled shall not exceed twenty-four hundred pesos.

(c) Temporary officers and employees who have served the Government less than five years before the approval of this Act, shall be entitled to a gratuity at the rate of half a month's salary or its equivalent in the case of those paid by the hour, by the day or by the week for each year of service and the proportionate amount of any fraction thereof.

Persons serving on a part time basis shall not be en-

titled to the gratuities authorized in this Act.

SECTION 2. In separating or retiring employees under the provisions of this Act, Department Heads shall give preference to officers or employees who, on account of their advanced age or of any physical or mental defect, are not fit to render further efficient service in the positions they occupy: PROVIDED, HOWEVER, That the appointees of the Governor-General may be retired by the Department Head concerned with the approval of the Governor-General.

SECTION 3. The gratuity provided in section one hereof shall be based on the highest basic rate of salary received and shall be paid monthly at the rate of thirty-three and one-third per centum of the monthly salary of the officer or employee, with the exception of those who will be entitled to a gratuity of one month's salary or less who shall totally be paid immediately upon separation: PROVIDED, HOWEVER, That with the approval of the Head of the Department in which such officer or employee was serving upon separation or retirement, the said officer or employee may, subject to such rules and regulations as may be approved by the Secretary of Finance, sell, transfer or cede his right to the gratuity payments, to any investment fund under the control of the Insular Government, or to any bank duly authorized to transact business in the Philippine Islands: PROVIDED, FURTHER, That the gratuity provided for in this Act shall not be attached or levied upon execution.

SECTION 4. If an officer or employee separated or retired under the provisions of this Act is entitled to the benefits of Act Numbered Twenty-five hundred and eighty-nine, as amended, or to the benefits of any law or special pension fund created by authority of the Philippine Legislature, such as the Teacher's Retirement and Disability Fund by virtue of Act Numbered Three Thousand and fifty, as amended, the Pension and Retirement Fund of the Philippine Health Service under Act Numbered Thirty-one hundred and seventy-three, and the Pension and Retirement Fund of the Philippine Constabulary under Act Numbered Sixteen hundred and thirty-eight, he shall have the privilege to choose between the benefits prescribed in said Acts and those herein provided for; but in no case

shall the payment of gratuity under more than one Act be authorized. If he chooses the benefits granted by the special pension or retirement Act, he shall be retired under the provisions of said Act if he is entitled to its benefits; in case he prefers the gratuity provided for in this Act, he shall be granted such gratuity, and the amounts deducted from his salary as contributions to the Teacher Retirement and Disability Fund, the Pension and Retirement Fund of the Philippine Health Service, or the Pension and Retirement Fund of the Philippine Constabulary, as the case may be, shall be refunded to him, and in the case of the Teacher's Retirement and Disability Fund, said fund shall also return to the general funds of the Insular Government the corresponding direct contributions made to said special fund by the Insular Government: PROVIDED, HOWEVER, That Judges and Auxiliary Judges of First Instances and Public Service Commissioners who may be retired under the provisions of this Act, shall be entitled to the benefits provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, the provisions of this Act or any other Act to the contrary notwithstanding.

SECTION 5. In case of the death of an officer or employee after separation or retirement from the service under the provisions of this Act, any gratuity or part thereof due to him shall be paid to his legitimate heir or heirs, or, if discounted under the provisions of section three hereof, then to the investment fund of the Insular Government or to the bank to which the right to such gratuity may have been ceded.

SECTION 6. A person separated or retired under the provisions of this Act may be reappointed to any position in the Insular Government but by accepting such reappointment he shall forever waive all future gratuity payments and or claims under the provisions of this Act. Similarly, a retired person who, under the provisions of section three hereof, has discounted the gratuity payments to which he is entitled shall, upon his reappointment to any position in the Insular Government, first refund to the investment fund or the bank to which he has ceded his right to the gratuity the total discounted value of all the gratuity payments which he would not yet have received had these

been made to him in monthly instalments.

SECTION 7. The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act.

SECTION 8. The offices or positions vacated by the separation or retirement of officers and employees with gratuities paid under the provisions of section one of this Act shall not be filled and shall be considered abolished ipso facto, except those specifically created by law, and those of chief clerk, chief of division, and lighthouse keeper.

SECTION 9. Nothing herein provided shall be construed as entitling to the benefits of this Act those officers and employees of the Insular Government who voluntarily resign from the service due to the reduction of their compensation or to transfer from one office to another by virtue of the provisions of any Act, or to the abolition of double compensations to which they were formerly entitled, or to any cause not provided herein.

SECTION 10. The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated.

SECTION 11. This Act shall take effect as of January first, nineteen hundred and thirty-three: PROVIDED, That the provisions hereof shall be applicable to such officers and employees of the Insular Government as were separated from the service during the year nineteen hundred and thirty-two as a result of the operation of Executive Order No. 369 of the Governor-General and of his Memorandum Order issued on April eight, nineteen hundred and thirty-two.

SECTION 12. If for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other section and provisions shall continue to govern as if the sections or provision so disapproved or held invalid had never been incorporated in this Act.

Approved, section 7 excepted, February 21, 1933.

On April 5, 1934, the defendants-respondents, by their counsel, filed the following demurrer:

(CAPTION AND TITLE OMITTED)

DEMURRER

Come now the defendants in the above-entitled case, by the undersigned Acting Solicitor-General, and demur to the complaint filed herein on the following grounds:

I. That the said complaint does not state facts sufficient to constitute a cause of action (1) in that the principal allegation therein, upon which plaintiff's cause of action is predicated, that plaintiff is entitled by virtue of the provisions of section 7 of Act No. 4051 to the gratuity provided for in said Act, is not legally tenable, for said section 7 of Act No. 4051 is not, and has never become, a law, and, consequently, upon its provisions no cause of action could be predicated, and (2) in that there is no allegation in the complaint that the herein defendants, who are vested with discretion in the granting of gratuities under Act No. 4051, have abused or exceeded their discretion.

II. That there is a defect of party defendant in this case, in that notwithstanding the fact that the Governor-General, whose approval is necessary to the retirement under the provisions of Act No. 4051 of his appointees, is a necessary party defendant in this action, he is not joined as such.

ARGUMENT

The essential allegations in the complaint filed in this action are: (1) that the plaintiff was prior to January 16, 1933, Justice of the Peace of Lingayen, Pangasinan, but on that date he was separated from the service by reason of the provisions of Act No. 3899; (2) that under the provisions of section 7 of Act No. 4051 (which was approved on Febraury 21, 1933, with the exception of section 7 thereof), justices of the peace who relinquish office during the year 1933 in accordance with Act No. 3899 were entitled to the gratuities provided for in Act No. 4051; (3)

that plaintiff applied for the gratuity provided for in said Act No. 4051, but the herein defendants refused to approve his application; and (4) that plaintiff has no other plain, speedy and adequate remedy in the course of law to enforce his rights.

I

The complaint herein does not allege facts sufficient to constitute a cause of action.

It is clear that the allegations of the complaint herein, as above stated, even if they were taken at face value, do not entitle the plaintiff to the issuance of a writ of mandamus compelling the defendants to approve his retirement and grant him the gratuity provided for in Act No. 4051. Section 7 of Act 4051, upon which plaintiff's cause of action is predicated, is not, and has never become, a law. Act No. 4051, which originally was H. R. Bill No. 2523, was approved by the Governor-General as follows:

"Approved: with the exception of section seven which is hereby disapproved.

"(Sgd.) THEODORE ROOSEVELT
Governor-General

"Feb. 21st '33".

(See certified copy of Act No. 4051 hereto annexed and made a part of this demurrer as Annex "1") The above veto, placed by the Governor-General on section 7 of the above mentioned bill, has been communicated in due time to the House of Representatives whence said bill originated. The Philippine Legislature accepted the veto and did nothing to override it. And, as H. R. Bill No. 2523 is an appropriation bill within the meaning of our Organic Law, for it appropriates money out of the general revenue of the State (Black & White Taxicab Co. v. Standard Oil Co., 25 Ariz. 381, 218 Pac. 139), and such is the character intended by the Legislature for the same as is apparent from a reading of the provisions of section 12 thereof whereby said Legislature anticipated the possibility of a partial veto of the bill by the Chief Executive,

the veto placed by the Governor-General on said section 7 of the bill, which is an item thereof (Callaghan v. Boyce, 17 Ariz. 433, 153 Pac. 773), is perfectly valid and constitutional. Section 19 of the Act of Congress of August 29, 1916 (the Jones Law) provides:

> **"SEC. 19. That each House of the Legislature shall keep a journal of its proceedings and, from time to time, publish the same; and the yeas and nays of the members of either House, on any question, shall upon demand of one-fifth of those present, be entered on the journal, and every bill and joint resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor-General. If he approves the same, he shall sign it; but if not, he shall return it with his objections to that House in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that House shall agree to pass the same, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that House it shall be sent to the Governor-General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each House shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve same, he shall return it to the Governor-General, so stating, and it shall not become a law: Provided, That if any bill or joint resolution shall not be re-**

turned by the Governor-General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the Legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor-General within thirty days after adjournment: Provided further, That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for his approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the Legislature without his approval.

"All laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of Government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the

Legislature shall act in such behalf the treasurer shall, when so directed by the Governor-General, make the payments necessary for the purposes aforesaid."

It is, therefore, clear that section 7 of H. R. Bill No. 2523, although incorporated in Act No. 4051, is not, and has never become a law, and that, consequently, no cause of action could be predicated upon its provisions.

Further, even granting, for the sake of argument, that section 7 of Act No. 4051 were in force, which we deny for the sake of truth, nevertheless the complaint herein does not state facts sufficient to constitute a cause of action.

Nothing is better settled in American jurisprudence than that a pension is not a matter of contract, but a mere gratuity granted by the government to deserving persons upon such terms and subject to such limitations as are imposed by existing laws and regulations. The prevailing doctrine on the subject is stated in Corpus Juris as follows:

"A pension is not a matter of contract, and is not founded upon any legal liability. No man has a legal vested right to a pension; it is a mere bounty or gratuity given by the government in consideration or recognition of meritorious past services, or of loss or damage sustained in the public service, and springing from the appreciation and graciousness of the sovereign. It may be bestowed on such persons and upon such terms as the lawmaking body of the government prescribes. And its payment must be made and accepted in exact conformity with the terms of the grant, and must be subjected to all the limitations, conditions, and exceptions contained. It is, at most, an expectancy granted by the law. And although existing pension laws may entitle one to a pension, the government may, at its pleasure, at any time, change the amount thereof, or re-

voke or destroy it altogether." (48 C.J., 786)

It may, therefore, be taken for granted that, although Act No. 4051 is silent on the subject, the granting of retirements under the provisions of said Act are subject to all the conditions and limitations of the existing laws and civil service regulations on the subject. In every case, therefore, of application for gratuity under Act No. 4051, Department Secretaries must use discretion and sound judgment, for a pension roll is a roll of honor and only those who by their conduct and behavior in office were a credit to the service are entitled to a pension. Hence, it cannot be denied that the defendant Secretary of Justice is vested with discretion in the determination of applications for gratuity under the provisions of Act No. 4051 filed by officers and employees under the Department of Justice. The exercise of the discretion thus conferred upon the Secretary of Justice by law cannot be controlled by the mandamus. The courts may force him to exercise such discretion, but they cannot force him to exercise it in a given direction, nor force him to change his decision once it has been made, except where it is apparent that he has abused his discretion or exceeded his jurisdiction (Lamb v. Philipps. 22 Phil. 456; Dy Gay v.: Crossfield & O'Brien, 38 Phil. 521)

In the instant case, the complaint merely alleges that the defendants have refused to approve plaintiff's application for a gratuity under Act No. 4051. There is no allegation in said complaint that defendants in so doing abused their discretion or exceeded their jurisdiction. It is, therefore, clear that the complaint does not state facts sufficient to entitle the plaintiff to the issuance of the writ of mandamus prayed for therein.

Moreover, as will be discussed hereinafter, the plaintiff is an appointee of the Governor-General. As such he can only be retired and granted a gratuity under the provisions of Act. No. 4051, with the approval of the Governor-General (See 2, Act No. 4051). There is no allegation in the complaint that the Governor-General has approved plaintiff's retirement under the provisions of Act No.

4051. The defendants, therefore, cannot be coerced by a writ of mandamus to approve plaintiff's retirement under said law and grant him the pension therein provided for, for that would be forcing them to do something which they alone cannot do. (Tabigue v. Duvall, 16 Phil. 324; Gonzales v. Board of Pharmacy, 20 Phl. 367)

II

There is a defect of party defendant in this action, in that the Governor-General, who is a necessary party defendant therein is not joined as such.

The plaintiff, as is alleged in the complaint, was Justice of the Peace of Lingayen, Pangasinan, prior to his separation from the service. He is, therefore, an appointee of the Governor-General (See 203, Adm. Code). Being an appointee of the Governor-General, he may only be retired under the provisions of Act No. 4051 by the defendant Secretary of Justice, with the approval of the Governor-General (Sec. 2, Act No. 4051). The Governor-General, is, therefore, a necessary party defendant in this case.

At this juncture, we deem it pertinent to remark, in anticipation of a possible move on the part of the plaintiff in the sense of joining the Governor-General as a party defendant in this case, that the Chief Executive's acts cannot be controlled by mandamus.

In the case of Severino versus Governor-General (16 Phil., 366), this court said:

> **"We think that the weight of authority, based upon legal principles and sound reasoning, supports the proposition that in the United States the supreme courts of the United States do not have jurisdiction to control the official acts of the governor. For better reasons we conclude that this court has no jurisdiction, either by mandamus or injunction, to control the official acts of the Governor-General, inasmuch as we have seen that his duties powers, and responsibilities are more**

comprehensive than those conferred upon any State Governor. When the Philippine Legislative body confers upon the Governor-General powers and duties, it does so for the reason that he is in a better position to know the needs of the country than any other member of the executive department, and with the full confidence that he will perform such duties, under his official oath, as his best judgment dictates. If this had not been the intention of the Legislature, they could have placed the duty upon some other official of the executive department. It no doubt is sometimes very necessary for the Governor-General to perform certain important executive duties without delay, and should this court attempt to distinguish between purely ministerial and discretionary duties, conferred upon him by law, and attempt to determine in each case which are purely ministerial, which are political, or which are discretionary, the Governor-General, to that extent, would become subservient to the judiciary. To avoid this is why the three great coordinate departments of the Governments were created and made independent of each other. President McKinley in creating civil government in this country took into consideration these fundamental principles of separate and independent departments, which have been demonstrated to be essential to a republican form of government, and conferred upon the Governor-General, as The Executive of the Philippine Islands, the power to execute the laws according to his best judgment, holding him responsible to the President of the United States, without interference on the part of the judiciary. In so doing, he reposed in the Executive of this country great confidence, realizing that he,

the Executive, acting independently of the judiciary, would be in a better position to carry out the great underlying principles of American institutions for the peace and happiness of the inhabitants of this country. The President realized that the final decision of every question in controversy must be left somewhere, and when such decision has been made it must be acepted as correct. The presumption is just as conclusive in favor of the executive action as to its correctness and justness, as it is in favor of judicial action." (Pages 400-402).

And in the case of Forbes etc. versus Chuoco Tiaco et al. (16 Phil., 534), it was held:

"In a government of separate and independent departments, executive, legislative, and judicial, with separate and distinct functions, one department will not attempt to interfere with the performance of the exclusive duties of another. To permit such an interference would destroy the independence of the separate departments and would make one subject to the control of the others. For the judiciary to interfere, for the purpose of questioning the manner of exercising the legal and political duties of the chief executive head of the Government or to control the action of the Legislative department, would, in effect, destroy the independence of the departments of the Government and would make all departments subject to the ultimate control of the judicial. Such a conclusion or condition was never contemplated by the organizers of the Government."

For the foregoing, we respectfully pray this Court

to dismiss the complaint filed in this case, with no costs taxed to the plaintiff.

Manila, April 5, 1934

EMILIO PEÑA
Acting Solicitor-General

On April 15, 1934, the Court overruled the demurrer filed. On April 26, 1934, the defendants respondents duly excepted to the order of the Court overruling their demurrer and at the same time filed the following answer:

(CAPTION AND TITLE OMITTED)

ANSWER

Come now the defendants in the above entitled case, by the undersigned Acting Solicitor-General, and, in answer to the complaint filed herein allege that they deny, generally and specifically, each and every allegation contained in said complaint.

Manila, April 26, 1934.

EMILIO PEÑA
Acting Solicitor-General

The case was submitted by the parties on the following stipulation of facts:

"STIPULATION OF FACTS"

"Come now the parties in the above entitled case, by their respective attorneys, and to this Honorable Court respectfully submit the following stipulation of facts:

"That the plaintiff, Juan Bengzon, is of legal age, a resident of the municipality of Lingayen, Pangasinan, and an ex-Justice of the Peace for the municipality of Lingayen, Pangasinan;

That defendants Secretary of Justice and Insular Auditor are the duly appointed and qualified Secretary of Justice and Insular Auditor of the Philippine Islands, respectively;

That the plaintiff herein, who is now about 70 years old, has been in the Government service as Justice of the Peace continually for more than twenty years, having been appointed as Justice of the Peace for the municipality of Lingayen, Pangasinan, on March 7, 1912, and ceased as such on January 14, 1933, by reason of the provisions of Act No. 3899;

That on or about December 31, 1932 the plaintiff herein wrote to the defendant Secretary of Justice a letter in which plaintiff requests for advice as to whom he should turn over the office of Justice of the Peace of Lingayen, Pangasinan. Copy of said letter is hereto annexed and made a part of this stipulation of facts as Exhibit "A";

That on or about January 13, 1933, the plaintiff herein received from the Honorable Pastor Endencia, then Acting Judge of the fifth Judicial District, a communication in which plaintiff was advised to turn over the office of Justice of the Peace of Lingayen to the Auxiliary Justice of the Peace of said municipality. Copy of said communication is hereto annexed and made a part of this stipulation of facts as Exhibit "B";

That on or about January 16, 1933, the plaintiff herein sent to the Honorable Pastor M. Endencia, then acting Judge of the Fifth Judicial District, a letter in which plaintiff advised said Judge of First Instance that on January 14, 1933, he turned over the office of Justice of the Peace of Lingayen, Pangasinan to Mr. Hilarion Magno, Auxiliary Justice of the Peace of said municipality. Copy of this letter is hereto annexed and made a part of this stipulation of facts as Exhibit "C";

That on or about March 26, 1933, the plaintiff herein sent to the defendant Secretary of Justice a communication applying for gratuity under act 4051, and that on or about April 5, 1933, the plaintiff herein received from the said Secretary of Justice a reply to said communication advising him that he was not entitled to the benefits of Act No. 4051. Copies of the said communication and re-

ply are hereto annexed and made a part of this stipulation of facts as Exhibits "D" and "E" respectively;

That on or about November 18, 1933, the plaintiff herein wrote a letter to the Governor-General, asking the latter to direct the defendants Secretary of Justice and Insular Auditor to approve plaintiff's application for gratuity as the Governor-General has no right to veto Section 7 of Act No. 4051, and on or about December 15, 1933, the plaintiff herein received from the Governor-General a reply thereto, advising the herein plaintiff that his contention has no merits. Copies of the said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "F" and "G" respectively;

That on or about December 23, 1933, the plaintiff herein sent to the Insular Auditor a letter, requesting the latter to authorize the payment to plaintiff of his gratuity for which an application had already been filed with the Department of Justice, and on or about January 18, 1934, the plaintiff herein received from the Insular Auditor a reply thereto, in which plaintiff was advised that Section 7 of Act No. 4051 was disapproved by the Governor-General and, consequently, he was not entitled to the gratuity provided for in said Act. Copies of said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "H" and "I", respectively."

Manila, P. I., July 20, 1934.

(Sgd.) SERAFIN HILADO
Solicitor-General
Attorney for the defendants.

(Sgd.) MARIO BENGZON
Attorney for the plaintiff.

Exhibit "A"

(See paragraph V of the Stipulation of Facts)

Office of the Justice of the Peace
Lingayen, Pangasinan, P. I.

December 31, 1932

The Honorable Secretary of Justice
Manila, P. I.
Honorable Sir:

Having reached the age of 65 years, and Act 3899 of the Philippine Legislature, approved on November 16, 1931, providing that present Justices of the Peace who have completed 65 years of age shall cease to be such on January 1, 1933, permit me to request you for advice as to whom I shall have to turn over the office of Justice of the Peace of Lingayen, province of Pangasinan, of which office I am to be relieved by provisions of law, without prejudice to my right to question, before a competent court, at such time I deem convenient and proper, the constitutionality of said law, for being a cruel and unjust punishment, without due process of law, in view of the lack of a pension or compensation to my forced retirement, simply because of having reached the age of 65 years.

I do not dare turn over the office of Justice of the Peace to the Auxiliary Justice of the Peace, Mr. Hilarion Magno, without the proper authority from you, to avoid protests against him in particular, he not being considered here by lawyers and residents in general as competent and fit for the post.

Very respectfully,

JUAN BENGZON
Justice of the Peace of Lingayen

Exhibit "B"

(See paragraph VI of the Stipulation of Facts)

COURT OF FIRST INSTANCE
PROVINCE OF PANGASINAN
Lingayen, P. I.

January 13, 1933.

Sir:

You are hereby advised that this court has received a communication from the Hon. Secretary of Justice, dated January 5, 1933, which says as follows:

> "Mr. Juan Bengzon, Justice of the Peace of Lingayen, Pangasinan, has already reached the age of sixty-five years, and, by operation of Act No. 3899, he is automatically separated from the ser-

vice, effective January 1, 1933. It is requested that you advise him accordingly."

If until now you have not yet turned over your office to the Auxiliary Justice of the Peace of that municipality, you are hereby directed to do so immediately and notify this Court accordingly.

Very respectfully

(Sgd.) P. M. ENDENCIA
Acting Judge
Fifth Judicial District.

Mr. Juan Bengzon,
Justice of the Peace,
Lingayen, Pangasinan

Exhibit "C"

(See paragraph VII of the Stipulation of Facts)

Lingayen, Pangasinan
January 16, 1933.

HON. P. M. ENDENCIA
Judge of the Court of First Instance
Fifth Judicial District.

Hon. Sir:

I have the honor to advise that, by virtue of your order directed to me, dated the 13th of this month, received by me at 11:40 a.m. of the 14th, I turned over the office of Justice of the Peace of Lingayen at exactly 12:00 o'clock noon of that same day to the Auxiliary Justice of the Peace, Mr. Hilarion Magno.

Very respectfully,

(Sgd.) JUAN BENGZON

Exhibit "D"

(See paragraph VIII of the Stipulation of Facts)

The Hon. Secretary of Justice
Manila, P. I.

Honorable Sir:

The undersigned has the honor to respectfully show to your honor the following:

From March 7, 1912 until January 14, 1933, I was Justice of the Peace for Lingayen, Pangasinan, P. I.

I ceased as Justice of the Peace on January 14, 1933, by an order of the Judge of the Court of First Instance of Pangasinan, by reason of the provisions of Act 3899 of the Philippine Legislature that Justices of the Peace who had reached the age of 65 years would be automatically retired.

In the gratuity bill recently approved by the Philippine Legislature and by the Governor-General, the Justices of the Peace retired under Act 3899 are included.

Wherefore, the undersigned requests that you order the payment to the undersigned, who has completed 21 years service, of the gratuity granted by said law in the manner set forth in said law. The monthly salary of the Justice of the Peace of Lingayen, Pangasinan in December, 1932, provided by law, is ₱300.00; so that the amount payable to me by virtue of the Gratuity Law, with 21 years of service, amounts to ₱6,300.00.

Very respectfully,

(Sgd.) JUAN BENGZON

Exhibit "E"

(See paragraph VIII of the Stipulation of Facts)

DEPARTMENT OF JUSTICE
Manila

April 5, 1933

Sir:

With reference to your communication of March 26, 1933, applying for retirement gratuity under Act 4051, I have the honor to advise you that the Governor-General vetoed section 7 of that Act, which would grant retirement gratuity to justices of the peace who had been dropped from the service by operation of Act 3899. You are there-

fore not entitled to the benefits of Act No. 4051.

For the Secretary of Justice:

Respectfully,

(Sgd.) SALVADOR ABAD SANTOS
Assistant Attorney on especial detail
Department of Justice

Mr. Juan Bengzon
Lingayen, Pangasinan
Ca-ffg

Exhibit "F"

(See paragraph IX of the Stipulation of Facts)

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

His Excellency the Governor General
of the Philippine Islands.

JUAN BENGZON,
Petitioner.

Re Section 7 of Act 4051 of the Philippine Legislature.

X - - - - - - - - - - X

Excellency:

The undersigned, lawyer, resident of Lingayen, capital of the province of Pangasinan, Philippine Islands, has the honor to respectfully expound and submit to your Excellency's consideration, the following:

On January of this year, 1933, at about twelve o'clock noon, the undersigned, being then performing his duties as Justice of the Peace for the municipality of Lingayen, which office he had been honorably and satisfactorily occupying since March 7, 1912, received an order from the Hon. Judge of the Court of First Instance of Pangasinan, Hon. Pastor Endencia, commanding him to immediately vacate and turn over the office of Justice of the Peace to the Auxiliary Justice of the Peace of said municipality, by reason of a communication from the Hon. Secretary of Justice which says as follows:

"Mr. Juan Bengzon, Justice of the Peace of Lingayen, Pangasinan, has already reached the age of sixty five years, and by operation of act 3899 he is automatically separated from the service, effective January 1, 1933. It is requested that you advise him accordingly."

By reason of said order of the said Hon. Judge of the Court of First Instance of Pangasinan, the undersigned, on said date of January 14, vacated the office of Justice of the Peace of the said municipality of Lingayen, and turned over the same to the Auxiliary Justice of the Peace.

Wherefore, it being provided in section 7 of the Gratuity Law, Act 4051 of the Philippine Legislature, approved on Febraury 21 last by the Governor-General of the Philippine Islands, the predecessor of your Excellency, a gratuity or compensation to the Justices of the Peace who were automatically retired by virtue of Act 3899, the undersigned filed a petition with the Hon. Secretary of Justice of the Philippine Islands, praying that he be paid his gratuity or compensation in the amount and in the form established in said Act 4051; but, the undersigned received a communication from the said Secretary of Justice of the Philippine Islands in which he states that the undersigned has no right to the said gratuity provided for in said act, by reason of the fact that said section 7 of said Act 4051 was vetoed by the Chief Executive.

It is true that at the foot of said Act 4051, the Hon. Governor General of the Philippine Islands, the predecessor of your Excellency, has placed the following "approved, section 7 excepted"; but these terms do not constitute positive, formal and technical veto of said section of the law, because "veto", as understood in the United States, is the expressed and reasoned disapproval by the Chief Executive of a bill or law approved by the Legislature, in whole or in part. (Webster New International Dictionary of the English Language)

On the other hand, the Organic Law of the government of the Philippine Islands, promulgated by the Congress of the United States on August 29, 1916, commonly known as the Jones Law, does not confer upon the Governor General of the Philippine Islands the power to veto a part or parts of any law passed by the Philippine Legislature, except only an appropriation law; neither does it grant

any authority to the Legislature of the Philippine Islands to grant to the Chief Executive said power. This can be seen clearly in the said Jones Law, and this has also been expressly declared by the present Attorney-General of the United States of America in his opinion re the Tariff Bill passed by the Philippine Legislature, and vetoed by the Governor General of the Philippine Islands, your Excellency's predecessor, published in the Manila Daily Bulletin of June 9 last, page 1, column 2, which is herewith enclosed. Consequently, even considering that those terms "section 7 excepted" constitute a positive, formal and technical veto of the provision of section 7 of Act 4051 of the Philippine Legislature, said veto is invalid, and therefore, the said section 7 of Act 4051 is in force and should be complied with.

Without conceding the gratuity or compensation to the Justices of the Peace who had been, under the provisions of Act 3899, automatically retired as such, by reason of their having reached the age of sixty five years, it will result that this provision of law would be unconstitutional, because it would mean their deprivation of an office, without due process of law, and which would demonstrate their incapacity to hold the office, by reason of their having reached the age of sixty five years, that is, it would be an uncalled for punishment against them, without due process of law, which is expressly prohibited in section 3 of said law. This consideration, that it would be an unjust and cruel punishment which would reduce them to poverty and indigence, making them retire from the office by reason of having reached the age of sixty five years, without any compensation, in which office they have employed their experience, education, and maturity in life, for the salary provided for by law to each and everyone of them, when they are as worthy to receive the benefits of the compensation as other employees of the government who, by reason of the reorganization, have been deprived of their employment, are to be supposed the reasons for the existence of said section 7 of the gratuity or of Act 4051 of the Philippine Legislature.

WHEREFORE, the undersigned respectfully requests your Excellency that, in the name of justice and equity, your Excellency order the Secretary of Justice to proceed to take the proper steps which would lead to the payment

of the gratuity or compensation to which the undersigned is entitled in accordance with section 7 of Act 4051 of the Philippine Legislature, in the amount and sum provided for in said law.

November 18, 1933.

Very respectfully submitted,
JUAN BENGZON
Petitioner

Exhibit "G"

(See paragraph IX of the Stipulation of Facts)

OFFICE OF THE GOVERNOR-GENERAL
OF THE PHILIPPINE ISLANDS

Manila, December 15, 1933.

Sir:

Referring to your letter of November 18, 1933, alleging that the Governor-General has no authority to veto section 7 of Act No. 4051, I am quoting hereunder, for your information, the 2nd indorsement of the Secretary of Justice dated December 6, 1933, which is self-explanatory:

"Respectfully returned to the Secretary to the Governor-General, Manila.

This office finds no merit in the contentions of ex-justice of the peace Juan Bengzon. However, since questions of constitutionality and the validity of the veto of section 7 of Act No. 4051 are raised by Mr. Bengzon, he can bring the matter in court."

Very respectfully,

(Sgd.) RICHARD R. ELY,
Assistant Secretary to the
Governor-General.

Mr. Juan Bengzon,
Lingayen, Pangasinan.

Exhibit "H"

(See paragraph X of the Stipulation of Facts)

Lingayen, Pangasinan
December 23, 1933.

The Insular Auditor
Manila, P. I.

Sir:

The undersigned was, until January 14, 1933, the Justice of the Peace of Lingayen, Pangasinan. By virtue of Act No. 3899, passed by the Philippine Legislature and approved by the Governor General, he ceased to be the Justice of the Peace of Lingayen, Pangasinan, by reason of age.

Under section 7 of Act No. 4051, commonly known as the Gratuity Law, passed by the Philippine Legislature and approved by the Governor General, Justices of the Peace who had been separated from the service under Act No. 3899, are entitled to the benefits granted by the said Gratuity Law. Unfortunately, however, the Governor General, in approving the said Gratuity Act, specifically excepted from his approval or vetoed the said section 7 of the Act.

The undersigned, however, believes and is of the opinion that said section 7 of Act No. 4051, notwithstanding the veto of the Governor General, is in full force and effect. Under the Philippine Organic Law, the Governor General has the power to veto any and all legislation passed by the Philippine Legislature, but nowhere in said Organic Law is the Governor General empowered to veto any portion and approve the rest of any legislation passed by the Philippine Legislature, except as to an item or items of an appropriation act. The Governor General's power, therefore, under the Organic Act, is limited to approving or disapproving any legislation in TOTO, except as to an appropriation act.

By reason of the foregoing, the undersigned is of the opinion that the veto of section 7 of Act No. 4051 by the Governor General is unconstitutional, hence said section 7 is in full force and effect. In consequence, the undersigned is entitled to the benefits granted by the said Act No. 4051.

The undersigned, hereby, therefore, respectfully in-

quires of your office whether or not you will authorize the payment to him of his gratuity under the said Act No. 4051, known as the Gratuity Law, and for that purpose, the undersigned respectfully requests that your office authorize the payment to him of his gratuity, application to it having been already filed with the department concerned.

Yours respectfully,

JUAN BENGZON

Exhibit "I"

(See paragraph X of the Stipulation of Facts)

THE GOVERNMENT OF THE PHILIPPINE ISLANDS
OFFICE THE THE AUDITOR.
MANILA

January 18, 1934

Mr. Juan Bengzon
Lingayen, Pangasinan

Sir:

In reply to your letter of December 23, 1933, please be advised that section 7 of Act 4051 was disapproved by the Governor-General in accordance with the provisions of Section 12 of the same Act. The action of the Governor-General in disapproving Section 7 being in accordance with law is perfectly constitutional. You are not, therefore, entitled to the gratuity provided for in said Act.

Respectfully,

(Sgd.) J. WELDON JONES
Insular Auditor

On August 29, 1934, the Court rendered the following decision:

(CAPTION AND TITLE OMITTED)

D E C I S I O N

The parties in this case, by their respective attorneys,

submitted to this Court on July 21, 1934, the following:

"STIPULATION OF FACTS"

"Come now the parties in the above entitled case, by their respective attorneys, and to this Honorable Court respectfully submit the following stipulation of facts;

"That the plaintiff, Juan Bengzon, is of legal age, a resident of the municipality of Lingayen, Pangasinan, and an ex-Justice of the Peace for the municipality of Lingayen, Pangasinan;

That defendants Secretary of Justice and Insular Auditor are the duly appointed and qualified Secretary of Justice and Insular Auditor of the Philippine Islands, respectively;

That the plaintiff herein, who is now about 70 years old, has been in the Government service as Justice of the Peace continuously for more than twenty years, having been appointed as Justice of the Peace for the municipality of Lingayen, Pangasinan, on March 7, 1912, and ceased as such on January 14, 1933, by reason of the provisions of Act No. 3899;

That on or about December 31, 1932 the plaintiff herein wrote to the defendant Secretary of Justice a letter in which plaintiff requests for advice as to whom he should turn over the office of Justice of the Peace of Lingayen, Pangasinan. Copy of said letter is hereto annexed and made a part of this stipulation of facts as Exhibit "A";

That on or about January 13, 1933, the plaintiff herein received from the Honorable Pastor Endencia, then Acting Judge of the Fifth Judicial District, a communication in which plaintiff was advised to turn over the office of Justice of the Peace of Lingayen to the Auxiliary Justice of the Peace of said municipality. Copy of said communication is hereto annexed and made a part of this stipulation of facts as Exhibit "B";

That on or about January 16, 1933, the plaintiff herein sent to the Honorable Pastor M. Endencia, then Acting Judge of the Fifth Judicial District, a letter in which plaintiff advised said Judge of First Instance that on January 14, 1933, he turned over the office of Justice of the Peace

of Lingayen, Pangasinan to Mr. Hilarion Magno, Auxiliary Justice of the Peace of said municipality. Copy of this letter is hereto annexed and made a part of this stipulation of facts as Exhibit "C";

That on or about March 26, 1933, the plaintiff herein sent to the defendant Secretary of Justice a communication applying for gratuity under Act 4051, and that on or about April 5, 1933, the plaintiff herein received from the said Secretary of Justice a reply to said communication, advising him that he was not entitled to the benefits of Act No. 4051. Copies of the said communication and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "D" and "E" respectively;

That on or about November 18, 1933, the plaintiff herein wrote a letter to the Governor-General, asking the latter to direct the defendants Secretary of Justice and Insular Auditor to approve plaintiff's application for gratuity as the Governor-General has no right to veto Section 7 of Act No. 4051, and on or about December 15, 1933, the plaintiff herein received from the Governor-General a reply thereto advising the herein plaintiff that his contention has no merits. Copies of the said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "F" and "G" respectively;

That on or about December 23, 1933, the plaintiff herein sent to the Insular Auditor a letter, requesting the latter to authorize the payment to plaintiff of his gratuity for which an application had already been filed with the Department of Justice, and on or about January 18, 1934, the plaintiff herein received from the Insular Auditor a reply thereto, in which plaintiff was advised that Section 7 of Act No. 4051 was disapproved by the Governor-General and, consequently, he was not entitled to the gratuity provided for in said Act. Copies of said letter and reply are hereto annexed and made a part of this stipulation of facts as Exhibits "H" and "I", respectively."

Manila, P. I., July 20, 1934.

(Sgd.) SERAFIN HILADO
Solicitor-General
Attorney for the defendants.

(Sgd.) MARIO BENGZON
Attorney for the plaintiff.

Counsel for petitioner filed his memorandum on the 14th day of the month, and counsel for the respondents filed his reply memorandum on the 24th day of the month.

Plaintiff's action seeks the issuance of a writ of mandamus. Its purpose is to ask of this Court that the respondents be ordered to approve and authorize the payment to the petitioner herein of his gratuity in accordance with Act No. 4051. The action is predicated upon section 7 of said Act 4051 which provides:

> **"Sec. 7.—The justices of the peace who must relinquish office during the year nineteen hundred and thirty- three in accordance with the provisions of Act Numbered Thirty-Eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."**

This section 7 of Act 4051 was vetoed by the Governor-General on February 21, 1933. The veto was as follows:

Act 4051 was House Resolution Bill No. 2523 and the Governor-General says in the English text submitted to him for approval: "Approved: with the exception of Section 7, which is hereby disapproved."

(Sgd.) THEODORE ROOSEVELT
(Governor-General)

Counsel for petitioner contends, however: (1) that the veto by the Governor-General is neither valid nor constitutional; (2) that said section 7 of Act 4051 is in force as law, and that petitioner is entitled to his gratuity as provided in said section; (3) that section 12 of said Act 4051 does not affect section

7 therein and (4) that plaintiff's action for a writ of mandamus is the proper remedy.

In the discussion of the issues raised by the petitioner, the most important is the last, in view of the fact that the very petitioner admits that section 7 of Act 4051 has been vetoed by the Governor-General.

The two respondents herein are executive officials of the government. Their duties are defined and regulated by law. In connection with the question raised in this cause, each one of them is subject, in the performance of his duties, to the provisions of the law. If section 7 of Act 4051 has been vetoed by the Governor-General, the veto, upon making said section 7 of Act 4051 without effect, because that is the effect of the veto, relieves, naturally, the respondents of their duties under said section. In this case the action for a writ of mandamus is improper:

> "**MANDAMUS—Mandamus will not lie to compel a public official to perform an act which is not peremptorily enjoined upon him by law, as one of the duties** inherent in his office.—Manotoc V. McMicking, Phil. 10-120".

> "**MANDAMUS—It is essential, for the issuance of a writ of mandamus, that the plaintiff has a legal patent right to the thing he sues for, and that the act being required of the defendant be an act peremptorily enjoined upon him by law. It will not be issued in doubtful cases. Although it may not be necessary that the duty be absolutely expressed, it is, however, necessary that it be clear. The writ will not be issued to compel an officer to do something which is not his duty**

> **to do, or that it is his duty not to do or to give the petitioner something to which he is not entitled under the law. The writ neither confers powers nor imposes duties. It is simply a mandate to compel the exercise of a power already possessed and to perform a duty already existing.**—Gonzales v. Board of Pharmaceutical Examiners—20 Phil. p. 376."

Petitioner contends that the veto by the Governor-General is not valid because it is unconstitutional. This question cannot be raised in this case, because the Governor-General is not a party to the case. In order that it may be raised in this case, the Governor-General should be made a party, because the question affects him directly. However, the inclusion of the Governor-General as a party in the case would be another reason why the remedy of a writ of mandamus would not be proper:

> **"GOVERNMENT: Independent departments: A department should not interfere in the performance by the other of its functions. In a government of separate and independent departments, executive, legislative, and judicial, with separate and distinct functions, one department will not attempt to interfere with the performance of the exclusive duties of another. To permit such an interference would destroy the independence of the separate departments and would make one subject to the control of the others. For the judiciary to interfere, for the purpose of questioning the manner of exercising the legal and political duties of the chief executive head of the Government or to control the action of the legislative department, would, in effect, destroy the independence of the**

departments of the Government and would make all departments subject to the ultimate control of the judicial. Such a conclusion or condition was never contemplated by the organizers of the Government." Forbes etc. v. Chuoco Tiaco and Crossfield, 16 Phil. 534.

The second and third questions are practically included in the first. If, as already declared, the first question raised cannot be determined in this case, because the Governor-General is not a party, necessarily the second and third questions do not merit consideration.

WHEREFORE, the Court dismisses petitioner's action with costs.

SO ORDERED.

Manila, August 25, 1934.

PEDRO Ma. SISON
JUDGE

The plaintiff-appellant appealed to the Supreme Court of the Philippine Islands from the decision of the Court of First Instance of Manila and on November 22, 1934, the case was duly docketed on appeal, bearing No. 42821 of the General Register of the Supreme Court.

On January 31, 1935, the petitioner-appellant, by his undersigned attorney, filed his brief in the case, assigning the following errors:

I

The Court **A QUO** erred in declaring that the question of the validity and the constitutionality of the veto by the Governor-General of section 7 of Act 4051 cannot

be determined in this present case because the Governor-General is not included as a party to it, and, thus in dismissing plaintiff's action with costs.

II

The Court **A QUO** erred in not declaring that the veto by the Governor-General of section 7 of Act 4051 is unconstitutional and invalid, hence said section 7 of Act 4051 is in full force and effect as law.

III

The lower Court erred in not declaring that the plaintiff-petitioner is entitled to his gratuity under said section 7 of Act 4051.

IV

The Court **A QUO** erred in not granting plaintiff-appellant's petition for the issuance of a writ of mandamus directed against defendants-respondents.

On July 15, 1935, the case was submitted for decision.

On January 18, 1936, the Supreme Court of the Philippine Islands rendered the following decision:

(CAPTION AND TITLE OMITTED)

DECISION

MALCOLM, J.:

This case was brought by a former justice of the peace to test the validity of the veto by the Governor-General of section 7 of Act 4051, the Retirement Gratuity Law. In the trial court the petition for a writ of mandamus directed to the Secretary of Justice and the Insular Auditor was dismissed. Thereupon the losing party appealed.

The facts, as stipulated, disclose the following: Juan Bengzon, the petitioner was appointed justice of the peace for the Municipality of Lingayen, Pangasinan, on March 7, 1912. Having reached the age of sixty-five he ceased to hold this position

on January 14, 1933, by reason of the provisions of Act No. 3899. On that date, acting pursuant to instructions received from the Judge of First Instance for the district, he turned over the office of the justice of the peace to the auxiliary justice of the peace of the municipality. Subsequently the petitioner addressed communications to the Secretary of Justice, the Governor-General, and the Insular Auditor applying for gratuity under Act No. 4051, but all of these officials advised him that he was not entitled to the benefits of the Act. Accordingly, on March 7, 1934, the instant complaint was filed with the Court of First Instance of Manila.

Act No. 4051 is entitled, "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, and for other purposes." The body of the Act provides in several sections for the officers and employees who may be granted gratuities thereunder, the rates of gratuities to be paid, and other matters. Among these sections, as the bill passed the Philippine Legislature, was section 7, reading: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall be also entitled to the gratuities provided for in this Act." Following this is section 10, reading: "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated," and section 12 reading, "If, for any reason, any section or provision of this

Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other sections and provisions shall continue to govern as if the section or provision so disapproved or held invalid had never been incorporated in this Act." The Act was "approved" by the Governor-General, "section 7 excepted, February 21, 1933". The Philippine Legislature accepted the veto.

Section 19 of the former Organic Act, the Act of Congress of August 29, 1916, established the practice for the enactment of a law, including the sanctioning of the veto power by the Governor-General. Specifically it provided: "The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object". The Constitution of the Philippines, Article VI, section II (2) contains an exactly similar provision, except that the words "The President" are substituted for the words "The Governor-General," and except that succeeding sentences in the Constitution prescribe the procedure for vetoing one or more items of an appropriation bill in a more explicit manner.

The first thought that occurs to one in resolving the appeal of the petitioner is that, within the meaning of section 7 of Act No. 4051, on the assumption that it be restored to the law by the judiciary, he has not shown himself to be a justice of the peace who was forced to relinquish office during the year 1933. At least, he did not take steps to vindicate an alleged right as did the justices of the peace of the Municipality of Malinao, Albay, and the Municipality of Alabat, Tayabas, (Regalado v. Yulo, 1935, XXXIII O. G. 925; Tañada v. Yulo, 1935,

XXXIII O. G. 1843). However, this point has not been advanced by the Government either in the lower court or on appeal, and so it would seem to be inappropriate to manufacture a defense for the respondents.

Something might also be made of the proposition on which the trial judge relied for dismissal and which is brought into view by the first assigned error. In other words, since the duty which the petitioner claims is enjoined by law upon the respondents not only does not exist but would require the intervention of the Governor-General, who is not a party, to exist, no cause of action is made out. This, however, merely results in hiding behind a technicality to keep the parties from securing the opinion of the courts on the main issue. We prefer to satisfy the petitioner by ruling on the question suggested by the first sentence of this decision and which is raised squarely by the second assigned error.

The Governor-General purported to act pursuant to the portion of section 19 of the Organic Act which is above quoted. The key words of that sentence are "appropriation bill" and "item or items." An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose. An item is the particulars, the details, the distinct and severable parts of the appropriation or of the bill. No set form of words is needed to make out an appropriation or an item. (State v. Moore, 1896, 50 Neb. 88; Callaghan v. Boyce, 1915, 17 Ar. 433).

Within the meaning of these words, is Act No. 4051 an appropriation bill? Are there particular items in that bill which the Governor-General could constitutionally veto? We are led to answer both questions in the affirmative.

The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law making power. His disapproval of a bill, commonly known as a veto, is essentially a legislative act. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that this will be a broader point of view.

The Constitution is a limitation upon the power of the legislative department of the government, but in this respect it is a grant of power to the executive department. The legislature has the affirmative power to enact laws; the Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the legislature. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts indulged every intendment in favor of the constitutionality of a veto the same as they will presume the constitutionality of an act as originally passed by the Legislature. (Commonwealth v. Barnett, 1901, 199 Pa. 161, 55 L. R. A. 882; People v. Board of Councilman, 1892, 20 N. Y. S. 52; Fulmore v. Lane, 1911, 104 Tex. 499; Texas Co. v. State, 1927, 53 A. L. R. 258).

In determining whether or not the Governor-General stepped outside the boundaries of his legislative functions, when he attempted to veto one section of Act. No. 4051, while approving the rest of the bill, we are not without the aid of the construction placed on his action by both legislative and executive departments. That the Philippine Legislature intended Act No. 4051 to be an appro-

priation measure with various items is apparent from a reading of section 12 thereof whereby the legislature anticipated the possibility of a partial veto of the bill by the Chief Executive. Not only this, but after the Chief Executive took action, the legislature made no attempt to override the veto or to amend the law to bring into being the section which the Governor-General had eliminated. Then the same question came again before the executive department, and all of its officials united in sustaining the validity of the Governor-General's veto.

While contemporaneous construction is not decisive for the courts, yet where a construction of statutes has been adopted by the legislative department and accepted by the various agencies of the executive department, it is entitled to great respect. It is our understanding that it has been the practice of the Chief Executive in the interpretation of his constitutional powers to veto separate items in bills analogous to that before us, and that this practice has been acquiesced in previously without objection, so that it would require a clear showing of unconstitutionality for the courts to declare against it. Since, therefore, legislative intent and executive purpose is evident, it devolves upon the judiciary to give deferential attention to the attitude assumed by the other two branches of the Government.

Viewed from another direction, there can be no doubt that Act No. 4051 is an appropriation bill. That is manifest from its provisions, and particularly from section 10 by which the necessary sum to carry out the purpose of the Act was "hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated." It has, however, been faintly suggested that by an appropriation bill is meant a general appropriation bill. We are shown nothing substantial to support this allegation. Un-

like in other constitutions, the word "general" was omitted, and we presume intentionally, from the Organic Act and the Constitution. Under such conditions, the courts would not be authorized to insert a word and by so doing amend the law.

The same considerations hold true with regard to the question of whether or not there was a particular item which the Governor-General could validly veto. No further action by the legislature was contemplated. The accounting officers would have experienced no diffuculty in setting up the different items provided for under Act No. 4051. It would have been a facile matter to eliminate the money needed to make section 7 thereof effective. The Chief Executive had the right to object to the expenditure of money for a specified purpose and amount without being under the necessity of and at the same time refusing to agree to other expenditures which met with his entire approval, and that intention was unequivocably expressed.

We have gone to the trouble to examine all of the authorities cited by the parties and other authorities not brought to our attention by them. It will be found that in practically all of these cases there was a conflict between the legislative and executive departments which the judiciary had to decide. Here there is no such conflict, but unison between the two. Here on the contrary the judiciary is asked to take the initiative and to restore a section to a law against the explicit confirmation of executive authority by the legislature and against explicit action taken by the Chief Executive. In our opinion, it was never intended by a mere process of reasoning, however plausible, for the courts to breathe life into a portion of an Act which has not been given life by the other departments of the government acting in conformity with the consti-

tution.

Deciding, therefore, the main issue as requested by the petitioner and appellant, we are constrained to rule against him and to hold that the veto by the Governor-General of section 7 of Act 4051 was in conformity with the legislative purpose and the provisions of the Organic Act. For this reason, the judgment brought on appeal will be affirmed, without special pronouncement as to the costs in either instance.

GEO. A. MALCOLM

WE CONCUR:

RAMON AVANCEÑA
JOSE A. SANTOS
JOHN A. HULL
CARLOS A. IMPERIAL
ANACLETO DIAZ
CLARO M. RECTO

VILLA REAL, J., dissenting:

The phrase "any particular item or items of an appropriation bill" used in Sec. 19 of the Jones Law refers to an appropriation bill which is composed of several items of appropriation and not to one which contains only an item of appropriation.

Act No. 4051, as its title indicates, is "a... Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, and for other purposes". In other words, said act is a gratuity law, appropriating in its Sec.

10 the necessary sum to pay the gratuities therein granted.

Outside of Sec. 10 there is no other provision or item appropriating any other sum of money which may be considered an item of an appropriation.

Paragraphs a, b, and c of Sec. 1 classify the officers and employees who shall be entitled to gratuity and establish the rate thereon according to salary and years of service.

Sec. 2 establishes the preference in the separation and retirement of employees.

Sec. 3 determines the salary on which the gratuity should be based.

Sec. 4 gives the separated or retired employee and officer the choice between the present gratuity law and other gratuity laws under which they may be entitled to gratuity.

Sec. 5 designates the person to whom payment of gratuity shall be made in case of death.

Sec. 6 establishes the conditions under which a separated or retired officer or employee under the law may be reappointed.

Sec. 7 extends the benefit of the law to justices of the peace under certain conditions.

Sec. 8 provides that the offices and positions created shall be considered abolished ipso facto, with certain exceptions.

Sec. 9 excludes from the benefit of the law officers and employees who have voluntarily retired.

Sec. 10 appropriates the necessary sum for the payment of the gratuities.

Sec. 11 fixes the dates on which the law shall take effect.

Sec. 12 provides that the disapproval by the Governor-General of any section or provision of the act, or the declaration of unconstitutionality of the same shall not affect the other sections.

It will be seen that none of the sections above enumerated, except Sec. 10, contains any appropriation of money.

All the twelve sections of Act No. 4051, with the exception of Sec. 10, contain only conditions under which the money appropriated in said sec. 10 may be paid. If this is true, the vetoing by the Governor-General of Sec. 7, which extends the gratuity payment in said law to justices of the peace, is unauthorized by the Constitution because, as stated above, it contains no appropriation of money but a mere designation of the officers to whom the money appropriated may be made.

In the case of State vs. Holder, 76 Miss., 158, 23 So. Rep., 643, the question was whether the following endorsement and qualified approval of "An act to appropriate money for the support and maintenance of the Industrial Institute and College for the years 1898 and 1899," was constitutional or not:

> I approve that part of this bill preceding the word 'provided', in the first section; and I approve the suggestion in said section that by-laws provide for equal dormitory privileges to all pupils, whether taking industrial or academic course, single or together; and I approve that part of said section providing for the expenditures of said money under the direction or approval of the trustees, and for report thereof to the legislature; and I approve section 2. The other parts, by authority of section 73 of the state constitution, I disapprove."

Sec. 73 of the Constitution of the State of Mississippi provides as follows:

SEC. 73. The governor may veto parts of any appropriation bill, and approve parts of the same and the portions approved shall be law.

The law in question reads as follows:

An Act to appropriate money for the support and maintenance of the Industrial Institute & College for the years 1898 and 1899.

SECTION 1. Be it enacted by the legislature of the state of Mississippi, that the following sums of money be and the same are hereby appropriated out of any money in the treasury and not otherwise appropriated, for the support and maintenance of the Industrial Institute & College:

For salaries of teachers and officers:

For the year 1898	$20,490.00
For the year 1899	20,490.00
For extending sewer	1,600.00
For painting building and repairs	1,600.00
Trustees' meetings, commencement exercises, printing and etc. etc.	800.00

All of said amounts to be drawn by draft of the president of the college, approved by the governor and the auditor of public accounts, and the auditor shall issue his warrant on the state treasurer for the said several sums: provided that no part of the money hereby appropriated for wages or salaries shall be available unless the board of trustees shall first adopt and enact rules and by-laws to the following effect: First. Conferring upon the president of the college the power to recommend to the board of trustees all the teachers who may hereafter be employed, and to select and remove other employees who are not teachers, and giving the president the authority for sufficient cause in his discretion to remove or suspend any member of the faculty subject to the approval of the trustees. Second. Confering upon the president of the college subject to the approval of the trustees to arrange and specify the course of study and to fix the schedule of studies and classes and to establish rules of discipline for the government of the pupils. Third. By-laws providing for equal dormi-

tory privileges to all pupils whether taking industrial or academic courses, singly or together, and by-laws to enforce the faithful discharge of duties of all officers, professors or employees, and before the auditor shall issue any warrant under this act, the board of trustees shall file with the auditor a certified copy of their action complying with the above conditions. All of said money to be expended under the direction or approval of the trustees of the college, and a report of the expenditures made to the legislature.

In deciding the case the Supreme Court of Mississippi said in part the following:

Section 73 of the constitution relates to general appropriation bills, or those containing several items of distinct appropriations; that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts, and consists of portions separable from each other as appropriations. It was not designed to enable the governor to veto objectionable legislation in appropriation bills, for that is provided for in section 69. x x x.

The same Court, in another portion of the decision, said the following:

x x x x The signing of the bill by the governor was qualified in the act and on the enrolled bill, and did not become law in part because it was not an approval of parts and disapproval of parts of such bill, as is in view in section 73 of the constitution; the bill in this case, in the parts vetoed, not being an appropriation bill, within its meaning, and not being a veto of parts of distinct and separable appropriations. To hold that the bill became law as a whole would be to make it so without the governor's approval, and in the face of his disapproval, of the conditions. Both legislative declarations and executive approval are essential prerequisites to the enactment of any law.

The action of the governor having been unconstitutional, and therefore void, his action in dealing with the bill was a nullity; but, the legislature having adjourned

within five days after the presentation of the bill to the governor, the bill, in legal contemplation, must be held to be yet in the hands of the governor, and may become law, unless sent back by him within three days after the beginning of the next session of the legislature. x x x

On the same principle and for the same reason the veto of the Governor-General of Sec. 7 of Act No. 4051 which is not an item of appropriation is null and void as in excess of the power granted to him by Sec. 19 of the Jones Law.

The fact that Sec. 12 of Act No. 4051 has provided that "If, for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other sections and provisions shall continue to govern as if the section or provision so disapproved or held invalid had never been incorporated in this Act," could not have rendered valid and constitutional the disapproval by the Governor-General of said Sec. 7; for the only power which the legislature has in case a bill is vetoed by the Governor-General is to override said veto by a two-thirds vote of its members and it cannot ratify or validate an invalid veto because of its unconstitutionality.

It is suggested in the majority opinion that the Governor-General having vetoed Sec. 7 of Act No. 4051 and the legislature not having overriden said veto the presumption is that the act of the Governor-General was constitutional and this Court must respect said implied approval. If such doctrine should prevail, then the executive may encroach upon the powers of the legislature, and if the latter should acquiesce in said encroachment either by

sanctioning it in the bill which is the subject of encroachment or by failing to override said veto, and the courts must respect such encroachment when the constitutionality of said bill is put in question, then the judicial branch of the government instead of being the guardian of the Constitution will become an accomplice to its violation, and the rights of the people will have no protection.

For the foregoing reasons, I am of the opinion: First, that while Act No. 4051 contains an appropriation to give it effect, it is not an "appropriation bill" containing itemized appropriations and therefore is not one which the Governor-General can veto under the last paragraph of Sec. 19 of the Jones Law; Second, that Sec. 7 of Act No. 4051, which extends to justices of the peace the gratuity granted in said act, is a condition for the payment of the money appropriated in Sec. 10 thereof and not an "item" of appropriation, and, therefore, the disapproval of the same by the Governor-General is unconstitutional and as such null and void; and Third, that the proviso contained in Sec. 12 of Act No. 4051 to the effect that the disapproval of any of its sections by the Governor-General shall not affect the rest of the bill, did not and could not validate an unconstitutional exercise of the veto power.

It is, therefore, the opinion of the undersigned that the decision of the lower court should be reversed and the writ granted.

ANTONIO VILLA-REAL

We concur in the dissenting opinion of Mr. Justice Villa-Real:

(Sgd.) J. C. VICKERS
(Sgd.) LEONARD S. GODDARD
(Sgd.) GEORGE C. BUTTE

On January 21, 1936, the following motion for reconsideration was filed:

(CAPTION AND TITLE OMITTED)

URGENT MOTION FOR RECONSIDERATION

Comes now plaintiff in the above entitled cause, by his undersigned attorney, and to this Honorable Court, respectfully prays for a reconsideration of the decision rendered and promulgated this 18th day of January, 1936; and at the same time prays that the above entitled case be again set for argument by counsel of record, in view of the important and far reaching effects of the questions and issues involved and of the reasons herein adduced in this motion in support of petitioner-appellant's claim.

ARGUMENT

At first glance, it would seem that the question herein involved is unimportant. In fact, when this case was first argued before this Court, the importance of the question raised was not perceived by the members of the Court. However, it apparently had assumed a threatening importance and had finally resulted in a divided opinion of this Honorable Court. It is unfortunate, indeed, for this country, that a question wherein is involved the very safety of the foundations of our so-called republican form of government should not receive due importance and that microscophic attention that it rightly deserves.

We have examined carefully the decision of the majority of this Court and we have analyzed every word therein contained. More than ever we are convinced of the importance of the question involved to the safety of the very foundations of our reputed republican form of government; of the extent of the powers of the executive and of the safety of those rights guaranteed to every citizen. In fact, the decision undertook to interpret the meaning of Article VI, section 2 of the constitution of the Philippine Commonwealth under which will be exercised the powers of the executive as interpreted by the majority opinion of this Court.

In our brief, we raised the following questions of law, to wit:

> **1. That Act 4051 is not "an appropriation bill" within the meaning of section 19 of the Jones Law and that the "appropriation bill" mentioned therein refers to the general appropriation bill or special appropriation bills with distinct items of appropriation.**
>
> **2. That even if granting, for the sake of argument, that Act 4051 is an "appropriation bill", sec. 7 of said Act 4051 is not "an item of an appropriation bill" within the meaning of sec. 19 of the Jones Law.**
>
> **3. That section 12 of Act 4051 has no effect whatsoever upon the veto by the Governor-General of section 7 of Act 4051.**

In disposing of the first question of law raised, the majority opinion of this court said:

> **"x x x It has, however, been faintly suggested that by an appropria-**

> **tion bill is meant a general appropriation bill. We are shown nothing substantial to support this allegation. Unlike in other constitutions, the word "general" was omitted, and we presume intentionally, from the Organic Act and the Constitution. Under such conditions, the courts would not be authorized to insert a word and by so doing amend the law."**

In answer to the above, we respectfully call the attention of this Honorable Court to the case of State vs. Holder, 76 Miss., 158, 23 SO. Rep., 643, cited in our brief, pages 26-28, and in the dissenting opinion of Justice Villa-Real. In said case, it will be found that the constitution therein involved provides as follows:

"Sec. 73. The Governor may veto parts of any appropriation bill, and approve parts of the same, and the portions approved shall be law."

It is submitted that the above is substantially the same as the provision of section 19 of the Jones Law and yet, the Court, in a scholarly decision, declared that "Sec. 73 of the constitution relates to general appropriation bills, or those containing several items of distinct appropriations; that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts, and consists of portions separable from each other as appropriations."

The majority opinion rejects appellant's contention that sec. 19 of the Jones Law refers to general appropriation bills or special appropriation bills with distinct items of appropriations and says that nothing substantial to support said allegation has been shown. Apparently the majority opinion did not take into account the history of this special

veto power of the executive as clearly shown in said case of State v. Holder, supra, and of the construction given to the same.

In regard to the second question of law, the majority opinion held that section 7 of Act 4051 is an "item" within the meaning of sec. 19 of the Jones Law. The majority opinion cites as authorities, State v. Moore, 1896, 58 Neb. 88; Callaghan v. Boyce, 1915, 17 Ariz. 433.

In our brief, we contended that section 7 of Act 4051 is not an "item" because said section is not itself an appropriation. We cited as authorities, Commonealth v. Barnett, 199, Pac. 161, 48 Atl. 976 and Callaghan vs. Boyce, (1915) 17 Ariz. 433. In said two cases, the court held that the term "item" as used in the constitution means "the particulars, the details, the distinct and separable parts of the appropriations."

We invite the attention of this Honorable Court to the decisions in the cases cited. **We invite the majority to examine carefully, minutely and conscientiously the decisions referred to** and the distinguished majority will not find in said decisions support for its ruling that the term "item" means "the particulars, the details, the distinct and several parts of **the bill.**"

In this connection, we also call the attention of this Honorable Court to the decisions quoted by the Solicitor-General in his brief, pages 5-6, re cases of Commonwealth v. Barnett and Callaghan v. Boyce, supra. The quotations were taken word for word from syllabi of decisions and not from decisions which support our allegation. Evidently the majority opinion was misled by the quotations by the Solicitor-General. Precisely, those cases referred to support our contention and specifically

declare that the term "item" means "the particulars, the details, and **severable parts of the appropriations." We invite this Court to examine carefully the decisions in those two cases if they support the majority opinion.** Said section 7 of Act 4051, not being itself an appropriation, is not an "item" within the meaning of the constitution.

PURPOSE AND PHILOSOPHY OF CONSTITUTIONAL PROVISION

The special veto power of the executive granted by the constitution to veto an item or items of an appropriation bill was designed with a view to guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the chief executive to approve and make law some appropriations, and to put others to the test of receiving a two thirds vote of the legislature as the condition of becoming law. (State v. Holder, 76 Miss. 158, 23 SO 643).

The constitutional provision, in regard to the special veto power of the Governor-General, therefore, is clear and plain in its purpose. The power given under it to the executive to veto in part a bill is definitely and clearly confined, limited and restricted to appropriation bills only. This is very plainly seen in the constitutional grant itself. Under the principle EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS the framers of the constitutional provision in question have clearly revealed the intent, the purpose and the philosophy of this constitutional grant of power to the executive in regard to the special veto power. Hence, this special veto power is clearly, definitely and strictly confined to matters of appropriations. But the ma-

jority opinion would interpret the word "item" to mean any part of a bill which is not in itself a distinct appropriation. We submit such an interpretation is a rank heresy against the purpose, the intent and the philosophy of the constitutional provision in question. It is illogical; it is inconsistent. Such an interpretation would make a mockery of the constitutional provision in question. It would put to naught the very intent, the purpose, the philosophy behind the constitutional grant of special veto power. **It would mean the giving to the executive a power which is plainly excluded in the very constitutional grant.** It would mean, in effect, giving to the executive the power to veto non-appropriation matters which is plainly denied him under the very constitutional provision in question.

In connection with the third question of law and the majority opinion regarding said section and upon which the decision of the majority is predicated, we quote from the dissenting opinion the following:

"It is suggested in the majority opinion that the Governor-General having vetoed Sec. 7 of Act No. 4051 and the legislature not having overridden said veto the presumption is that the act of the Governor-General was constitutional and this Court must respect said implied approval. If such doctrine should prevail, then the executive may encroach upon the powers of the legislature, and if the latter should acquiesce in said encroachment either by sanctioning it in the bill which is the subject of encroachment or by failing to override said veto, and the courts must respect such encroachment when the constitutionality of said bill is put in question, then the judicial branch of the government instead of being the guardian of the Constitution will become an accomplice to its violation, and the rights of the people will have no protection."

DISASTROUS CONSEQUENCES OF MAJORITY OPINION

The interpretation given by the majority to the constitutional provision in question is fraught with the gravest consequences to the government of the Commonwealth and the future Philippine Republic. It is respectfully submitted that said interpretation has opened wide the doors to connivance between an unscrupulous chief executive and a supine legislature to defeat the form of government established by the constitution of a strict separation of powers between the three departments of the government. It is more than that. Henceforth, the chief executive will be omnipotent, because he will have practically the same legislative power as the very Legislature, and we shall have a condition of things never contemplated and appalling in its possible consequences. For it is not beyond possibility that, in order to give the President a chance to use his veto according to the constitution, a section that appropriates money, however insignificant and valueless it may be, should be inserted in any kind of bill passed by the Legislature, and thus the President should have the right to veto any section in said bill under the special power to veto "an item or items of an appropriation bill". It will certainly be a dangerous delegation of legislative power pure and simple, if not an abandonment of the legislative power to the chief executive. And in such a situation, supposing that the framers of the constitution intended the proviso in question to be interpreted that way, there is no necessity for any limitation of the veto power of the chief executive. There will be no necessity for the existence of the proviso as to the veto power of the President. It is because we cannot conceive of any

bill, which cannot be turned into "an appropriation bill" by the simple expedient of inserting therein a section or part, however insignificant, that appropriates money.

We earnestly pray of this Court to allow the undersigned attorney to argue again this case before this Court. The very safety of the foundations of our government is involved. This court cannot afford to just ignore the tremendous possibilities of the majority opinion without giving careful consideration to every phase of the question. **No one stands to lose, everyone is bound to gain.**

For all of the foregoing, therefore, appellant respectfully prays that this Court reconsider its decision in the above entitled cause, and that it be again set for hearing so that the question can better be thoroughly and exhaustively examined, argued and threshed out.

Manila, P. I., January 18, 1936.

MARIO BENGZON
Atty. for Petitioner-Appellant,
430 Rizal Avenue, P.O. Box 449
Manila

On January 24, 1936, the Supreme Court passed the following resolution:

> "The Court sitting **in banc** having under consideration the motion for reconsideration of the decision and judgment in case G. R No. 42821, Juan Bengzon vs. The Secretary of Justice et al., promulgated on January 18, 1936, and after full discussion, the Chief Justice and Justices, Hull, Imperial, Diaz, and Recto voted to deny said motion for reconsi-

deration, Justices Villa-Real, Vickers, Butte, and Goddard dissenting."

On January 28, 1936, the following exception and notice of intention to appeal to the Supreme Court of the United States was filed:

EXCEPTION AND NOTICE OF INTENTION TO APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Comes now Juan Bengzon, petitioner and appellant in the above entitled action, by his undersigned attorney, and hereby excepts to the order of this Honorable Court of date the 24th day of January, 1936, overruling his motion for a reconsideration of the decision rendered in this case, and also excepts to the final judgment entered herein, and hereby gives notice of his intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this Court entered in this case, and respectfully requests that the record of this case be retained in this Court pending the preparation of said petition and of the record to accompany the same; further, he also respectfully prays that he be not required to post a supercedeas bond, in view of the fact that there is no judgment the execution of which is sought to be stayed.

Manila, P. I., January 25, 1936.

MARIO BENGZON
Atty. for Petitioner-Appellant
430 Rizal Avenue, P. O. Box 449
Manila

On January 29, 1936, the Supreme Court passed the following resolution:

"Upon consideration of the motion of the attorney for the petitioner and appellant in case G. R. No. 42821, Juan Bengzon vs. The Secretary of Justice and Insular Auditor, excepting to the order of this court of January 24, 1936, overruling his motion for reconsideration of the decision as well as to the final judgment entered therein, and giving notice of his intention to apply to the Supreme Court of the United States for a writ of certiorari for the review of the decision and judgment of this court, and praying that the record of said case be retained in this court pending the preparation of said petition without requiring him to file a supercedeas bond. IT IS ORDERED that the exception and notice of appeal be noted; and it appearing that there is no judgment the execution of which is sought to be stayed, the prayer of the motion is hereby GRANTED."

On February 7, 1936, the clerk of the Supreme Court of the Philippine Islands entered the final judgment which reads as follows:

(CAPTION AND TITLE OMITTED)

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 18th day of January, A. D. nineteen hundred and thirty-six;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 25th day of August, nineteen hundred and thirty-four, and from which

the above-entitled appeal was taken, be, and the same is hereby, affirmed, without special pronouncement as to the costs in either instance.

(Sgd.) V. ALBERT
Clerk of the Supreme Court of the
Philippine Islands

Certified correct:

Clerk, Supreme Court

UNITED STATES OF AMERICA
COMMONWEALTH OF THE PHILIPPINES
IN THE SUPREME COURT

I, V. Albert, clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 60 printed pages contain a true and correct translation and transcription of the record of the case entitled, "Juan Bengzon, Petitioner-Appellant vs. Secretary of Justice and Insular Auditor, Respondents-Appellees" concerning payment of gratuity to Justices of the Peace, bearing No. 42821 of the docket of this Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this 5th day of May, A.D. 1936.

V. ALBERT
Clerk, Supreme Court of P.I.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the Supreme Court of the Philippine Islands is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.